

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL CASE NO. 3:21-cv-00271-MR**

ROMUS ELLIS,

Plaintiff,

vs.

CAMERON MASSAGEE, et al.,

Defendants.

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ORDER

THIS MATTER is before the Court sua sponte.

The pro se Plaintiff filed this civil rights action pursuant to 42 U.S.C. § 1983 while he was incarcerated at the North Carolina Central Prison. The Second Amended Complaint passed initial review against six Defendants for the use of excessive force/failure to intervene and the involuntary administration of medication, and the Court exercised supplemental jurisdiction over North Carolina assault and battery claims. [Doc. 19]. Defendants Beaver, Bryan, Massagee, and Poteat have filed an Answer [Doc. 32]; Defendant Gagnon has been served but has not filed an answer [Doc. 36]; and Defendant Stanford has not been served [see Doc. 26].

On September 6, 2022, the Court dismissed Defendant Stanford without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil

Procedure and ordered the Plaintiff to take further action to prosecute the case against Defendant Gagnon. [Doc. 42]. He was cautioned that “[f]ailure to take any such further action shall result in the dismissal of this Defendant without prejudice.” [Id. at 3].

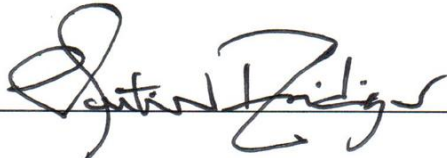
The Plaintiff has not taken further action against Defendant Gagnon, and the time to do so has expired.¹ Accordingly, Defendant Gagnon is dismissed from this action without prejudice. See Fed. R. Civ. P. 41(b) (“If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.”); Link v. Wabash R.R. Co., 370 U.S. 626, 630-33 (1962) (although Rule 41(b) does not expressly provide for sua sponte dismissal, Rule 41(b) does not imply any such restriction and a court has the inherent power to dismiss a case for lack of prosecution or violation of a court order).

IT IS, THEREFORE, ORDERED that Defendant Gagnon is **DISMISSED WITHOUT PREJUDICE** from this action for lack of prosecution.

¹ The Plaintiff filed only a “Notice of Address and Notice of Plaintiff Intends to Proceed with this Action” stating that he “intends to move forward and proceed with this action.” [Doc. 43 at 1]. He has not, however, taken any steps to prosecute the case against Defendant Gagnon.

IT IS SO ORDERED.

Signed: October 27, 2022

A handwritten signature in black ink, appearing to read "Martin Reidinger", written over a horizontal line.

Martin Reidinger
Chief United States District Judge

